



C.M.A.No.3082 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3082 of 2013

1. Maheswari
2. Minor Ranjithkumar
3. Minor Mohanapriya
Minors rep. By Guardian Maheswari
4. Jagathambal ...Appellants

Vs.

1. K.Abdul Wahab (*Died*)
2. National Insurance Co. Ltd.,
Branch Office, Post Box 15,
Thanthi Periyar Perangadi,
Near Old Bus Stand,
Salem – 1.
3. S.Sithara Begum
4. Shan Basha
5. Alahvuddin Basha ...Respondents

(RR3-R5 brought on record as LR's of the deceased 1st respondent, vide order dated 10.12.2020 made in CMP.No.11995, 11997 & 11998 of 2020 in CMA.No.3082 of 2013)



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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree passed in M.C.O.P.No.1110 of 2001 Motor Accident Claims Tribunal-cum-Additional District Judge and Special Judge for E.C. Act cases, Salem dated 25.07.2011.

For Appellants : Mr.C.K.M.Appaji

For Respondents : R1 – Died.
: Mr.D.Bhaskaran, for R2
: No Appearance, for R3 to R5

JUDGEMENT

Aggrieved by the Judgement and Decree dated 25.07.2011 made in M.C.O.P.No.1110 of 2001 on the file of the Motor Accident Claims Tribunal Motor Accident Claims Tribunal-cum-Additional District Judge and Special Judge for E.C. Act cases, Salem, the claimants have come up with this Appeal.

2. It is the case of the appellants/claimants that on 22.05.2001, at about 5.00 p.m., when the deceased was travelling in the auto rickshaw bearing Regn.No.TDL- 3731, the auto was driven in a rash and negligent manner by the driver and the vehicle met with an accident by falling upside down resulting in the deceased being thrown out and sustaining



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grievous injuries and inspite of taking him to the hospital, he succumbed to the said injuries. Therefore, claim petition was filed seeking compensation at the hands of the 1st and 2nd respondents to be paid jointly and severally. After contest, the Tribunal, vide impugned judgment dismissed the claim made by the appellants/claimants. Aggrieved by the said order, the claimants have preferred this Appeal.

3. Learned counsel appearing for the appellants/claimants submitted that, immediately case was registered in Crime No.297/2001 and, thereafter transferred to City Traffic Investigation Wing and renumbered as Crime No.372/2001, which clearly shows that at the earliest point of time, the case has been registered. It is the further submission of the learned counsel that the investigation conducted by the 2nd respondent is with oblique motive to defeat the legitimate claim of the claimants. It is the further submission of the learned counsel that drawing adverse inference based on the evidence of R.W.1 and R.W.2 is wholly erroneous as the motor vehicle inspector's report has not been properly appreciated. Further, the documents have not been properly appreciated by the Tribunal which requires interference.



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4. Per contra, learned counsel appearing for the 2nd respondent/ insurance company submitted that, the Motor Vehicle Inspector's report, Ex.A-3, coupled with the post-mortem report, Ex.A-2 clinchingly establish that the death of the deceased was not on account of the alleged accident. Further, the registration of FIR by the police and not by the Traffic Investigation wing clearly casts a doubt on the accident itself as an accident would have definitely come to the knowledge of the Traffic Investigation Wing. The complaint before the Shevvapet Police and its further transfer after a lapse of almost one month casts a doubt on the case, which has been rightly weighed by the Tribunal in dismissing the claim petition and, therefore, no interference is warranted.

5. This Court gave its careful consideration to the submissions advanced on either side and perused the materials available on record.

6. While it is claimed by the claimants that the deceased died on account of the injuries sustained in the accident, however, the insurance company claims that the deceased had not died on account of the alleged accident and, therefore, no compensation is payable.



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7. The appellants/claimants alleged that the deceased died in the accident when the auto bearing Regn.No.TDL-3731 met with an accident and turned upside down. Though the claimants make such a claim, however, the said claim has not been established by any materials. In fact, it is only a contra inference that could be drawn on the basis of the materials tabled by the insurance company. In this backdrop, Ex.A-2, the post-mortem certificate of the deceased reveal that he had suffered injuries, which could not have been caused in an accident. More particularly, the injuries are stated to be puncture wounds, which could not have been caused in an accident. It is further evidenced from Ex.A-3/ Ex.R-6, the Motor Vehicle Inspector's Report coupled with the evidence of R.W.2, the Motor Vehicle Inspector that, there is no damage caused to the auto. In fact, to a pointed question, R.W.2 had deposed that had really an accident happened, definitely there would be revealing damages on the vehicle, but no such damages were noted.

8. Therefore, it clearly transpires that the auto, which is alleged to have been involved in an accident, in which the deceased is alleged to have travelled, had not met with any accident. Such being the case, the



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auto having not been involved in the accident, the deceased could not have suffered the injuries on account of any accident in the said auto.

9. Based on the aboves said oral and documentary evidence, the Tribunal has given a conscious finding that the deceased had not died on account of any injuries suffered in the accident and further the injuries were not suffered in the accident and, therefore, the appellants/claimants are not entitled for any compensation. The said findings arrived at by the Tribunal is based on materials and proper reasoning and this Court does not find any infirmity with the same and the order passed by the Tribunal deserves to be sustained.

10. For the reasons aforesaid, this appeal is dismissed confirming the order dated 25.07.2011 passed by the Tribunal in M.C.O.P. No.1110 of 2001. There shall be no order as to costs in this appeal.

30.10.2023

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Index	: Yes / No
Speaking order	: Yes / No
NCC	: Yes / No



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To

- 1.The Motor Accident Claims Tribunal-cum-
Additional District Judge and Special Judge for E.C. Act cases,
Salem.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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